IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7004 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? No :

DILIP H SHAH

Versus

NEW INDIA ASSURANCE

Appearance:

1. Special Civil Application No. 7004 of 1989

MR AMAR MITHANI for MR PM RAVAL for Petitioner

MR RAJNI H MEHTA, SENIOR ADVOCATE, for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 20/03/2003

ORAL JUDGEMENT

By filing instant petition under Article 226 of the Constitution, the petitioner has prayed to issue an

appropriate writ, order or direction to quash order dated March 31, 1987, passed by the General Manager of the respondent-Company dismissing him from service, and also order dated August 21, 1987, passed in appeal by the Chairman-cum-Managing Director of New India Assurance Company Limited affirming the order passed by the competent authority.

2. The petitioner was working as an Inspector at Sayala under Surendranagar Branch of the New India Assurance Company Limited ("the Company" for short) during the period from 1981 to 1984. It was reported to the competent authority that he had committed certain acts of omissions and commissions. The competent authority was of the opinion that there were grounds for inquiring into the truth of imputations of misconduct against the petitioner. Therefore, the competent authority had appointed Shri K.H.Dalal, who is an employee of the Company, as an inquiry officer by letter dated September 3, 1985 to inquire into the truth of misconducts committed by the petitioner. The charges levelled against the petitioner were as under :

(i) Issuing policies without number and date in collusion with the Assistant Branch Manager Mr.R.C.Mehta with a view to avoiding accounting of documents as well as premium and thus, committing a fraud on the Company.
(ii) Collecting cash premium against cover-notes, but not depositing the same with the Company.
(iii) Non-submission of tag utilization statement in respect of tags issued to him.
(iv) Providing insurance-cover in bogus names with a view to defrauding the Company, and
(v) Depositing premium after the claims were lodged.

3. One Mr.M.N.Shah was appointed as presenting officer for the purpose of inquiry against the petitioner. The petitioner was given a copy of letter dated September 3, 1985, issued by the Company, wherein charges levelled against him were mentioned, and his plea was recorded. The petitioner did not plead guilty and had presented his case through Mr.P.S.Mehta, an employee of Oriental Assurance Company. The inquiry was conducted as per the provisions of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 ("the Rules" for short) and the proceedings were recorded in the form of Minutes. At the inquiry, the presenting officer had examined following witnesses : (i) Mr.D.H.Raval, P.W.7, (ii) Mr.J.K.Joshi, P.W.5 (iii) Mr.H.R.Raval, P.w.2, and (iv) Mr.N.S.Baviskar, P.W.1, to establish the charges

levelled against the petitioner. The presenting officer had also produced documentary evidence in support of the case of the Company against the petitioner, which were duly exhibited by the inquiry officer. As recorded in report dated September 16, 1986 made by the inquiry officer, initially exparte proceedings were conducted against the petitioner because the petitioner had failed to avail of the opportunity given to him to participate in the inquiry. However, the record shows that later on those witnesses, who were examined by the presenting officer to prove the charges levelled against the petitioner, were also permitted to be cross-examined by the petitioner and the petitioner was afforded opportunity to produce documents on which he was seeking reliance, but the petitioner had neither examined himself nor examined any witness to establish that the case of the Company against him was not well-founded. Rule 25(15) of the Rules provides that the Inquiring Authority may, after the employee closes his case, and shall, if the employee has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the employee to explain any circumstances appearing in the evidence against him. Accordingly, the inquiring authority had generally questioned the petitioner on the circumstances appearing against him in the evidence for the purpose of enabling him to explain the circumstances appearing in the evidence against him. After completion of production of the evidence, the petitioner and the presenting officer had filed written briefs of their respective cases. On the conclusion of the inquiry, the inquiring authority prepared inquiry report dated September 16, 1986 roughly running into 23 pages mentioning (a) a gist of the articles of charge and the statement of the imputations of misconduct, (b) the manner in which the inquiry was held, (c) the manner in which the proceedings conducted were recorded, (d) as to how the documents produced were exhibited, (e) a gist of the defence of the petitioner in respect of each article of charge, (f) an assessment of the evidence in respect of each article of charge, and (g) the findings on each article of charge and the reasons therefor. The inquiring authority, on assessment of evidence, concluded that the charges levelled against the petitioner were established and forwarded his report to the competent authority for appropriate action. The said report is produced as Annexure-N to the petition. It may be stated that the petitioner had demanded statements of two witnesses examined at preliminary inquiry which was conducted by the Vigilance Officer of the Company, but those statements were not supplied by the inquiring authority.

The disciplinary authority was of the view that those statements should have been supplied to the petitioner and that it was necessary to give direction to the inquiring authority to make further inquiry. Accordingly, the disciplinary authority by letter dated November 10, 1986 directed the inquiring authority to supply the statements given by the two witnesses examined at the preliminary inquiry conducted by the Vigilance Officer and remitted the case to the inquiring authority for further inquiry and report. The inquiring authority thereupon supplied copies of statements of the two witnesses recorded at preliminary inquiry conducted by the Vigilance Officer to the petitioner and further permitted the petitioner to have inspection of the documents which were demanded by him. After further inquiry was complete, the petitioner filed written brief of his case. Thereafter second inquiry report dated March 10, 1987 was prepared by the inquiring authority wherein particulars such as (i) how the proceedings were conducted, (ii) examination of the petitioner by the inquiry officer, (iii) submission of briefs by both the parties, (iv) technical objections raised by the defence, (v) examination of the defence version, and (vi) assessment of the evidence etc. were recorded. On evaluation of evidence, the inquiring authority concluded that no modification in the conclusion arrived at in the first report was necessary and that the charges levelled were proved. The said report was forwarded to the competent authority for appropriate action. After going through the proceedings, documents and the two inquiry reports including further findings submitted by the inquiring authority, the disciplinary authority was satisfied that sufficient opportunity was given to the petitioner to defend himself against the charges and that no procedural lacuna was noticed. The disciplinary authority agreed with the findings recorded by the inquiring authority and held that the charges levelled against the petitioner were proved.

4. It was noticed by the competent authority that the cattle insurance had been introduced by the Government as a part of the rural development programme to help the weaker sections of the society/predominantly illiterate and semi-literate, and that instead of rendering helping hand to the villagers in implementing successfully the objectives of the Company, the petitioner had taken undue advantage of ignorance of the parties, exploited the situation and thereby defeated the very purpose of the scheme. The disciplinary authority was, therefore, of the opinion that the penalty of dismissal from service under Rule 23(g) of the Rules

deserved to be imposed on the petitioner. Accordingly, by an order dated March 31, 1987, which is produced as Annexure-N to the petition, the petitioner was dismissed from service.

5. Feeling aggrieved by the order dismissing him from service, the petitioner preferred an appeal before the Appellate Authority of the Company as provided in the Rules. The Chairman-cum-Managing Director of the Company, who heard the appeal, dismissed the same by order dated August 21, 1987, giving rise to instant petition.

6. I have heard Mr.Amar Mithani, learned advocate of the petitioner, and Mr.R.H.Mehta, learned Senior Advocate of the respondent-Company at great length and in detail, and has considered the documents forming part of the petition.

7. The first contention that the petitioner was not supplied with the copies of the two inquiry reports submitted by the inquiring authority to the disciplinary authority and, therefore, the order dismissing the petitioner from service should be set aside, is devoid of merits. In Commandant, Central Industrial Security Force and others v. Bhopal Singh, (1993)4 SCC 785, it has been authoritatively ruled by the Supreme Court that the law laid down on November 20, 1990 in Union of India vs. Mohmed Ramzan Khan, (1991)1 SCC 588, to the effect that a delinquent employee is entitled to get copy of inquiry report submitted by the inquiry officer to the disciplinary authority, is prospective in operation i.e. applicable to the orders of punishment passed after November 20, 1990 and not to the orders of punishment passed before November 20, 1990. In this case, the order of punishment was passed on March 31, 1987 and was confirmed in appeal on August 21, 1987 i.e. before November 20, 1990 on which date the decision in Union of India v. Mohmed Ramzan Khan (supra) was delivered. The view expressed in Commandant, Central Industrial Security Force & Ors. (supra) has been reiterated by the Supreme Court in several other reported decisions and the latest decisions reiterating the said view are; (i) State of Punjab and others v. K.K.Sharma, (2002)9 SCC 474, and (ii) Debotosh Pal Choudhury v. Punjab National Bank and others, (2002)8 SCC 68. Therefore, the order dismissing the petitioner from service is not liable to be set aside on the ground that the petitioner was not furnished copies of the two inquiry reports submitted by the inquiring authority to the disciplinary authority.

8. The plea that so far as this Court is concerned, the law was well settled, since the decisions in (1) S.T.Dasadia v. Commissioner, Surat Municipal Corporation, 1983(1) GLR 770, (2) M.J.Ninama v. Post Master General, Ahmedabad, 1984 GLH 800, (3) N.M.Mandalia v. Bhavnagar Municipality, 1984(2) GLR 837, (4) Union of India and others v. N.N.Prajapati, 1985(2) GLR 1404, and (5) Homi B.Munshi v. P.G.Shroff and others, 1989(2) GLR 1367, to the effect that a delinquent is entitled to a copy of the report of the inquiry officer and, therefore, non-supply of the copies of the two inquiry reports to the petitioner has vitiating effect, cannot be accepted. It is true that in the above quoted decisions, a view was taken that failure by the disciplinary authority to supply to the delinquent officer a copy of report of the inquiring authority amounts to denial of the principles of natural justice and consequently the order imposing penalty is liable to be quashed and that such a plea was accepted by the Division Bench of this Court in T.S.Rabari v. Government of Gujarat & Anr., 1991(2) GLR 1035 in following terms :-

> "Again, in our opinion, the learned Counsel for the petitioners are right in submitting that so far as this Court is concerned, the law is well settled, since the decision in M.J.Ninama, decided in 1984 by the Single Judge and confirmed by the Division Bench, wherein this Court has specifically held that a delinquent is entitled to a copy of the report of the Enquiry Officer and that the Forty-second Amendment of the Constitution has not altered the said position. Thus, even prior to and in absence of Mohmed Ramzan Khan, the respondents were bound to supply a copy of the Enquiry Officer's report to a delinquent. Therefore, it is not open to the respondents to advance such an argument ignoring and keeping aside the law laid down by this Court."

However, it is to be noticed that the effect of law declared by the different High Courts and the Central Administrative Tribunal that failure by the disciplinary authority to supply to the officer concerned a copy of report of the inquiring authority amounts to denial of the principles of natural justice and consequently the order imposing penalty is liable to be quashed, has been considered by the Five Judge Constitution Bench of the Supreme Court in Managing Director, ECIL, Hyderabad and others v. B.Karunakar and others, (1993)4 SCC 727. In Para-43 of the reported decision, following pertinent

observations have been made by the Supreme Court :

"However, it has to be noticed that although it is in Mohd. Ramzan Khan case that this Court for the first time accepted and laid down the law that the delinquent employee is entitled to the copy of the report before the disciplinary authority takes its decision on the charges levelled against him, Gujarat High Court in a decision rendered on July 18, 1985 in Union of India vs. N.N.Prajapati and a Full Bench of the Central Administrative Tribunal in its decision rendered on November 6, 1987 in Premnath K.Sharma v. Union of India had taken a similar view on the subject. It also appears that some High Courts and some Benches of the Central Administrative Tribuna have given retrospective effect to the law laid down in Mohd. Ramzan Khan case notwithstanding the fact that the said decision itself had expressly made the law prospective in operation. The fact, however, remains that although the judgments in N.N.Prajapati case and Premnath K.Sharma case as well as some of the decisions of the High Courts and of the Benches of the Central Administrative Tribunal were either taking a similar view prior to the decision in Mohd. Ramzan Khan case or giving retrospective effect to the said view and those decisions were not specifically challenged, the other decisions taking the same view were under challenge before this Court both before Mohd. Ramzan Khan case was decided and thereafter. In fact, as stated in the beginning, the reference to this Bench was made in one such case as late as on the August 5, 1991 and the matters before us have raised the same question of law. It has, therefore, to be accepted that at least till this Court took the view in question in Mohd. Ramzan Khan case the law on the subject was in a flux. Indeed, it is contended on behalf of the appellants/petitioners before us that the law on the subject is not settled even till this day in view of the apparent conflict in decisions of this Court. The learned Judges who referred the matter to this Bench had also taken the same view. We have pointed out that there was no contradiction between the view taken in Mohd. Ramzan Khan case and the view taken by this Court in the earlier cases and the reliance placed on K.C.Asthana case to contend that a contrary view was taken there

> was not well-merited. It will, therefore, have to be held that notwithstanding the decision of the Gujarat High Court in N.N.Prajapati case and of the Central Administrative Tribunal in Premnath K.Sharma case and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the Mohd. Ramzan Khan case was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the enquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law laid down in Mohd. Ramzan Khan case. This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by the High Courts or by this Court in R.K.Vashisht case."

A bare reading of the above quoted paragraph makes it clear that it has to be accepted that at least till the Supreme Court took the view on question in Mohd. Razak Khan's case that a delinquent is entitled to a copy of the report submitted by the inquiry officer to the disciplinary authority, the law on the subject was in a flux. Further, notwithstanding the decisions of the High Court of Gujarat in N.N.Prajapati (Supra), and of the Central Administrative Tribunal in Premnath K.Sharma v. Union of India (1988) 6 ATC 904 and of other Courts and Tribunals, the law was in an unsettled condition till at least November 20, 1990, on which day Mohd. Razak Khan's case was decided. It is also apparent from the above quoted observations that the proceedings pending in Courts/Tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to law that prevailed prior to the said date and not according to the law in Mohd.Razak Khan's case and this is so notwithstanding the view taken by different Benches of Central Administrative Tribunal or by the High Courts or by the Supreme court in R.K.Vashisht v. Union of India, 1993, Suppl.(1) SCC 431. Having regard to the clear proposition of law laid down

by the Supreme Court, the order imposing penalty on the petitioner is not liable to be quashed on the ground that even prior to and in absence of decision in Mohd. Razak Khan's case the disciplinary authority was bound to supply copies of the two reports made by the inquiring authority to the delinquent. The said plea, therefore, fails and is hereby rejected.

9. The second contention based on requirements of Rule 25(8)(iii) of the Rules to the effect that non-supply of statements of Mr.Velabhai Melabhai Bharvad and Dr.D.P.Mori has resulted into denial of the principles of natural justice and, therefore, the order imposing punishment of dismissal from service should be set aside, cannot be accepted. Sub-rule (8) of Rule 25 of the Rules, inter alia, provides that if the employee does not plead guilty, inquiring authority shall adjourn the case to a later date not exceeding thirty days, after recording an order that the employee may, for the purpose of preparing his defence, be supplied with the copies of the statements of witnesses, if any, listed in the chargesheet. It may be mentioned that though Mr.Velabhai Melabhai Bharvad and Dr.D.P.Mori were cited as witnesses in the chargesheet, they have not been examined by the presenting officer at the inquiry to prove any of the charges levelled against the petitioner and this is quite evident from page No.105 of the compilation. What is important is that the inquiry officer has neither referred to nor relied upon the statements of either Mr.Bharvad or Dr.Mori for coming to the conclusion that the charges levelled against the petitioner are established. The minutes of the proceedings maintained on page 105 of the compilation would show that Mr.Bharwad and Mr.Mori were dropped as witnesses in order to avoid duplication of the same facts and not for any other purpose. Further, the petitioner himself could have examined either Mr.Velabhai Melabhai Bharvad or Dr.D.P.Mori to substantiate his defence, but admittedly, the petitioner has neither examined himself nor examined any witness in support of his defence. Under the circumstances, a question arises as to what is the effect of non-supply of the copies of the statements of witnesses referred to in the chargesheet. A bare reading of sub-rule(8) of Rule 25 makes it abundantly clear that the inquiring authority is obliged to supply copies of statements of those witnesses to be examined at the inquiry and not of the witnesses merely named in the chargesheet and who are not examined at the inquiry. Further, the grievance regarding non-supply of the statements of two witnesses examined was raised by the petitioner in his written brief before the first report

dated September 16, 1986 was forwarded by the inquiring authority to the disciplinary authority. The second inquiry report dated March 10, 1987 would indicate that the inquiring authority had supplied copies of the statements of witnesses examined and also permitted the petitioner to have inspection of all the documents subsequently demanded. This assertion made by the inquiring authority in its second report could not be assailed by the petitioner before the first appellate authority, nor the petitioner has been successful in pointing out to this Court that the assertion made by the inquiring authority in the second report to the effect that the petitioner was permitted to have inspection of other documents demanded by him, which also included the two statements, was factually incorrect. Under the circumstances, the order dismissing the petitioner from service is not liable to be set aside on the ground that the copies of statements of Mr.Velabhai Melabhai Bharvad and Dr.D.P.Mori were not supplied to him.

10. The third contention that the petitioner having not pleaded guilty, the case should have been adjourned to a later date by the inquiring authority and the procedure adopted by the inquiry officer in exhibiting the documents produced by the presenting officer in absence of Assistant to delinquent employee having resulted into miscarriage of justice the petition should be allowed, has no substance. The minutes of the case maintained by the inquiring authority indicates that the case was adjourned to a later date after the plea of the petitioner was recorded. In the Rules, there is no provision for exhibiting the documents which may be presented either by the presenting officer or by the delinquent employee. The petitioner had informed the authority concerned that he was willing to avail of the assistance of any other person and accordingly, the petitioner was permitted to be defended by an employee who was serving in another Insurance Company. After recording the plea, the inquiry officer had ascertained from the presenting officer whether he was giving copies of the relevant documents to the delinquent employee and the presenting officer had handed over photostat copies of the documents to the petitioner; whereas the originals were submitted for consideration of the inquiry officer, which were subsequently exhibited in the presence of the petitioner, but of course not in the presence of his assistant because at that time, the petitioner had not appointed/selected his assistant. The delinquent officer had verified and checked the copies provided to him and confirmed before the inquiring officer that the same were copies of the originals which were submitted by the

presenting officer before the inquiring officer. As the petitioner had not pleaded guilty and the copies of the documents duly verified by him and compared with the originals, were handed over to him, the case was adjourned to a later date. The procedure adopted by the inquiring authority cannot be regarded as contrary to the provisions of Rule 25(8) of the Rules or the principles of natural justice. Under the circumstances, the plea that the procedure adopted by the inquiry officer has resulted into miscarriage of justice and, therefore, the inquiry should be held to have been vitiated, cannot be accepted and is rejected hereby.

11. The fourth submission that the two documents, which were annexed with the written brief of the presenting officer submitted before the inquiry officer, had not been supplied to the delinquent and, therefore, the order is vitiated, is devoid of merits. From the record of the case, it is manifested that along with his written brief, the presenting officer had annexed two statements, viz.; one statement mentioning numbers of cattle policies; and the second statement containing tag numbers. It may be stated that the petitioner was permitted to have inspection of the policies, numbers whereof were mentioned in the first statement; whereas the second statement contains numbers of tags prepared on the basis of Tag Register produced on the insistence of the petitioner before the inquiry officer at Exhibit 50. Thus, it is wrong to contend that two independent documents were produced by the presenting officer before the inquiring authority. The particulars of policies, numbers whereof are mentioned in the first statement, were known to the petitioner because the petitioner was permitted to have inspection of the policies themselves, and the tag numbers were noted on the separate statement on the basis of Tag Register, which was produced during the course of inquiry before the inquiring authority. Under the circumstances, non-furnishing of statements, which were prepared on the basis of material on record, is of no consequence nor it has caused any prejudice to the petitioner and, therefore, the impugned order cannot be voided on the ground that the two documents, which were annexed by the presenting officer with his written brief, were not supplied to the petitioner.

12. The fifth contention that the petitioner was not permitted to cross-examine the witnesses on material particulars which has resulted into failure of justice and, therefore, the petition should be accepted, has also no substance. The minutes prepared by the inquiring authority would indicate that initially, the petitioner

had not participated in the inquiry and had remained absent without intimation to the inquiring authority. Since the presenting officer had called his witnesses, the inquiring authority had decided to proceed with inquiry ex parte against the petitioner after waiting for the petitioner for more than sufficient time. On November 22, 1985, examination-in-chief of two witnesses presented by the presenting officer was recorded and the inquiring authority had advised the petitioner to participate in the inquiry by telegram as well as by registered post A.D. After examination of two witnesses was over on November 22, 1985, the case was adjourned to December 5, 1985, but on that day also, the petitioner had not remained present, and on that day further witnesses were examined by the presenting officer. Thereafter, again the matter was adjourned to January 8, 1986 and as on that date, the Assistant to the delinquent employee was present, the inquiring authority had permitted the Assistant to the delinquent employee to cross-examine the witnesses. The examination-in-chief of the witnesses as well as their cross-examination would indicate that the inquiring authority had permitted the Assistant to the delinquent employee to cross-examine all the witnesses on material particulars. The learned counsel for the petitioner could not demonstrate before the Court as to on which material particulars, the witnesses were not permitted to be cross-examined. The minutes prepared by the inquiring authority would indicate that appropriate adjournments were given to suit the requirements of delinquent employee as well as the presenting officer. The lengthy cross-examination of the witnesses suggests that the petitioner was permitted to cross-examine the witnesses on all material particulars. Therefore, the plea that the petitioner was not permitted to cross-examine the witnesses on material particulars, which has resulted into failure of justice, is without substances and is hereby rejected.

13. The sixth contention, namely, that in the further inquiry no sufficient time was granted to the petitioner to cross-examine the witnesses on the particulars mentioned in the Tag Register and, therefore, the inquiry should be held to have been vitiated, cannot be accepted. The minutes of the second inquiry prepared would indicate that Assistant to the delinquent employee while cross-examining the witnesses had tried to establish that the witnesses were got up witnesses and were not reliable. As observed by the inquiring authority, the Assistant to the delinquent employee had put questions to the witnesses, which were mainly relating to the acts of omissions and commissions done by Mr.R.C.Mehta. The

proceedings of domestic inquiry held on April 8, 1986 produced on record of the petition at page 142 would indicate that Mr.D.H.Raval P.W.7 was permitted to be cross-examined at length with reference to Tag Register. Similarly, the proceedings maintained on that day, which is produced on page 150 of the petition, would indicate that several questions were put to Mr.H.R.Raval, P.W.2, by the assistant to the petitioner, with reference to the Tag Register. Again, the minutes dated June 12, 1986 produced on record at page 211 would show that the petitioner was permitted to cross-examine Mr.N.S.Baviskar, P.W.1 at length regarding tags collected by the petitioner. Further, the minutes of the proceedings maintained on December 29, 1986 produced on the record of the case at page 236 of the compilation would indicate that the petitioner was granted further opportunity to cross-examine Mr.D.H.Raval, P.w.7 on the basis of particulars, which were contained in the Tag Register. The record would indicate that the inquiring authority had not permitted the Assistant to the delinquent employee to put those questions to the witnesses which were either repetitive in nature or not related to the inquiry or with which the witnesses were not concerned at all. The note prepared by the inquiring authority on page 248 of the compilation would indicate that the documents produced by the presenting officer were allowed to be inspected by the petitioner or copies were given to him and that the petitioner was afforded an opportunity to produce his own evidence and witnesses. The general picture which emerges from the minutes maintained by the inquiring authority clearly establishes that a fair and reasonable procedure was adopted by the inquiring authority while conducting inquiry against the petitioner and that the petitioner was also permitted to cross-examine the witnesses on the basis of particulars mentioned in the Tag Register.

14. The seventh contention that non-consideration of three letters dated March 27, 1983, December 27, 1983 & July 3, 1984 addressed by the petitioner to the Divisional Manager of the Company, seeking guidance in the matter of deposit of premium in the Code Number allotted to the petitioner, by Mr.Mehta, has resulted into patent miscarriage of justice and, therefore, reliefs claimed in the petition should be granted, is devoid of substance. The petitioner has produced his reply dated February 5, 1986 to the chargesheet, addressed to the inquiry officer, at Annexure-J to the petition. It appears that the copies of the three letters were also annexed by the petitioner along with the said reply. However, it is doubtful whether the

petitioner had produced the same before the inquiry officer during the course of the inquiry. A serious doubt also arises as to whether Assistant to the delinquent employee had made reference to these letters before the inquiry officer. This is so, in view of uncontroverted averments made on oath by Mr.Bharat K.Kamdar, Deputy Manager working in the Regional Office of the respondent-Company, in Paras 6(i) and 8(i) of affidavit-in-sur-rejoinder filed on October 13, 2000. Thus, the petitioner has failed to establish satisfactorily that, these three letters were produced for consideration of the inquiry officer. Even if it is presumed that, the three letters were produced by the petitioner before the inquiry officer, the defence of the petitioner, as is evident from the cross-examination of the witnesses examined by the presenting officer, was that the policies were issued by Mr.R.C.Mehta and not by him. This defence has been squarely considered by the inquiring authority and not believed. In the three letters which were addressed by the petitioner to the Divisional Manager, he had mentioned that the premium was collected by Mr.Mehta, and shockingly, the petitioner himself has stated in his letter dated December 27, 1983 that the procedure adopted, namely collection of premium by Mr.Mehta, was proper, but he had sought guidance on the question whether issuance of cover-note first and payment of premium later on was proper or not. This would indicate that Mr.R.C.Mehta was using the Code of the petitioner in collusion with the petitioner. It is well to remember that though the petitioner had addressed the above referred to three letters to the Divisional Manager, the petitioner had issued three policies; (i) Policy No. 649/1787/686, (ii) Policy No.649/1787/662, and (iii) Policy No.649/1787/687 on March 28, 1984, whereas the amount of premium relating to the above referred to policies was deposited on June 29, 1984 as observed by the inquiring authority on page 339 of the compilation. The petitioner could not produce on record any material to substantiate his defence that the above referred to policies were issued by Mr.R.C.Mehta and not by him. The learned counsel for the petitioner could not convince the Court that any material was produced by the petitioner before the inquiring authority to suggest that the three policies mentioned above, were, in fact, issued by Mr.R.C.Mehta, and not by the petitioner. In the three letters, the say of the petitioner was that the premium of policies was being collected by Mr.Mehta and it was subsequently credited in the code allotted to the petitioner. This defence in terms is considered and rejected by the inquiring authority. Therefore, though there is no specific mention to the three letters

addressed by the petitioner to the Divisional Manager in the report of the inquiring authority, it is not correct to say that the defence as emerging from the letters was not considered by the inquiring authority. Therefore, the plea that non-consideration of three letters addressed by the petitioner to the Divisional Manager seeking guidance in the matter of deposit of premium has resulted into miscarriage of justice and has vitiated the inquiry cannot be accepted.

15. The eighth contention based on the decision rendered by the Calcutta High Court in The Collector of Customs and others v. Md. Habibul Haque, 1973(1) SLR 321 to the effect that non-supply of copy of written brief of the presenting officer to the petitioner has resulted into breach of the principles of natural justice and, therefore, the impugned orders should be set aside, has no merits. Rule 25(16) of the Rules provides that after the completion of the production of the evidence, the employee and the presenting officer may file written briefs of their respective cases within 15 days of the date of completion of the production of evidence. The record maintained by the inquiring authority indicates that one written brief was submitted by the presenting officer and two written briefs were submitted by the petitioner. Neither the presenting officer had given copy of his written brief to the petitioner nor the petitioner had given copies of his two written briefs to the presenting officer. The report of the inquiring authority shows that the inquiring authority had evaluated the briefs submitted by the petitioner in detail, which is quite evident from the minutes recorded on page Nos. 333 & 354 of the compilation. The written brief is summary of evidence produced on the record. The presenting officer in his written brief would highlight that material which, according to him, would establish that the delinquent is guilty of the misconduct with which he is charged; whereas the delinquent would indicate in his written brief that material which would establish that he is innocent. Thus, the written brief is not a new material and is not required to be supplied to the delinquent. The rule which enables the presenting officer and the delinquent employee to file written brief does not cast any duty either on the presenting officer or on the delinquent employee to serve copy on the other side. In Collector of Customs & Ors.(supra), the Division Bench of the Calcutta High Court had occasion to consider Rule 14(19) of the Civil Services (Classification, Control and Appeal) Rules, 1965, which was as under :

"The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any, appointed and the Government servant, or permit them to file written brief of their respective cases, if they so desire."

The above quoted Rule makes it evident that the language used therein is not the same as is employed in Rule 25(16) of the Rules. In instant case, the inquiring authority was not obliged to give a personal hearing to the petitioner after recording of evidence was over. Therefore, the decision rendered by the Division Bench of the Calcutta High Court is of little assistance in deciding whether the presenting officer was obliged to serve a copy of his written brief on the petitioner. This Court is of the view that it would not be proper to construe the relevant Rule to mean that it is necessary for the presenting officer to serve a copy of the written brief on the petitioner. Even if it is held that furnishing of copy of written brief prepared by the presenting officer to the petitioner is the requirement of rule, the Court finds that non-supply of copy of the said brief has not resulted into denial of reasonable opportunity being given to the petitioner. As observed earlier, the inquiry officer has evaluated the written briefs submitted by the petitioner in detail, but the Court does not find any evaluation of written brief submitted by the presenting officer. The two reports submitted by the inquiring authority would indicate that he had neither relied on nor taken the clue from the written arguments made by the presenting officer for the purpose of coming to the conclusion that the charges levelled against the petitioner were proved. What is done by the inquiring authority is that while evaluating the written briefs of the petitioner, he has referred to certain parts of written brief submitted by the presenting officer, but his conclusion that the charges levelled against the petitioner are established is based on the appreciation of evidence of the witnesses and documents produced before him. For all these reasons, this Court is of the opinion that non-supply of copy of the written brief of the presenting officer to the petitioner has not occasioned failure of justice and the order dismissing the petitioner from service cannot be set aside on the ground that a copy of the written brief submitted by the presenting officer was not supplied to the petitioner.

16. The last contention that there is no proof that there was collusion between the petitioner and Mr.Mehta,

and as the said finding recorded by the inquiring authority is based on presumptions and inferences, the reliefs claimed in the petition should be granted, cannot be accepted. It is well settled by catena of decisions of the Supreme Court that the High Court while hearing a petition under Article 226 of the Constitution does not exercise appellate powers. As noticed earlier, the petitioner had filed an appeal as contemplated by the Rules and the appeal was ultimately dismissed. In Municipal Board, Saharanpur v. Imperial Tobacco of India Ltd. and another (1999)1 SCC 566, the Supreme Court has ruled that the High Court while exercising powers under Articles 226 & 227 of the Constitution cannot act as a Court of appeal and only patent error of law as found from the orders of the authorities below could be corrected in exercise of its jurisdiction. Again, in Apparel Export Promotion Council v. A.K.Chopra, (1999)1 SCC 759 while dealing with service matter, the Supreme Court has explained that the High Court cannot function as an appellate authority and substitute its own conclusion as to the guilt of the delinquent. What is ruled therein is that the question of adequacy of evidence is outside the purview of the High Court and High Court normally should not interfere, unless such findings are based on no evidence or were wholly perverse and/or legally untenable. In this case, the finding, namely, that the petitioner had acted in collusion with Mr.Mehta is based on appreciation of evidence of four witnesses examined by the presenting officer and their cross-examination by the petitioner. Before recording the said finding , the documentary evidence produced was also looked into. Therefore, this Court cannot go into the question of sufficiency of evidence which was adduced by the presenting officer to prove the charges against the petitioner. In the light of evidence on record, it is difficult to uphold the contention of the learned counsel of the petitioner to the effect that the finding regarding collusion between the petitioner and Mr. Mehta is based on presumptions and inferences. Further, the appellate order passed by the Chairman-cum-Managing Director of the Company is produced on the record of the petition at page 455. The appellate authority has observed, inter alia, as under :-

> "When I had inquired with him in respect of each of the charges levelled against him to which Mr.Shah admitted, though with reservation, and tried to blame his colleague for it".

This would show that even before the appellate authority, the charges levelled against the petitioner

were admitted by him though reluctantly and that he had tried to blame his colleague obviously Mr.Mehta. Once the charges levelled are admitted, the grievance regarding non-supply of documents or non-supply of copy of written brief or sufficiency or otherwise of the evidence pales into insignificance. As held by the inquiry officer, bogus Policy Nos. 649/1787/00532 to 00541 could not have been issued without consent and connivance of the petitioner. With his written brief, the petitioner had produced an affidavit of Mr.K.J.Shah without examining him as a witness and without serving a copy of the same on the presenting officer. The affidavit also indicates that the petitioner had insured cattle without receiving the premium. The affidavit substantiates charge against the petitioner that he had given insurance risk earlier and premium was deposited with the respondent-Company, later on. On appreciation of evidence, the competent authority has held that the petitioner had committed several irregularities such as temporary misappropriation of premium amount by depositing the same on later dates, issuing bogus policies, settling bogus/false claims, keeping the policies blank so that the claim could be made subsequently etc. Further, the petitioner had not followed the procedure of getting the policies pre-numbered and issuing them in the same order and forwarding to the Branch, the copies and the receipts thereof. On overall view of the matter, I am satisfied that no manifest error is committed either by the inquiring authority or the disciplinary authority or the appellate authority in coming to the conclusion that the charges levelled against the petitioner have been proved and, therefore, no case for interference by this Court in the present petition, which is filed under Article 226 of the Constitution, is made out.

17. It may be stated that the Cattle Insurance Scheme was introduced by the Government as a part of the Rural Development Programme to help the weaker sections of the society and for predominantly illiterate and semi-literate persons, but instead of rendering helping hands to the villagers in implementing successfully the objectives of the Company, the petitioner had taken disadvantage of ignorance of the poor persons, exploited the situation and thereby defeated the very purpose of the Scheme. Under the circumstances, the punishment of dismissing the petitioner from service cannot be regarded as harsh warranting interference of this Court. Except the contentions, which have been noted and dealt with, no other contention has been raised by the learned counsel of the petitioner for consideration of this Court. The

Court has not found any substance in the points raised on behalf of the petitioner. Thus, the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged. There shall be no order as to costs.

(J.M.Panchal,J.)

(patel)